

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARY-IRENE HINES

Plaintiff,

V.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. C03-5635 FDB

ORDER AWARDING 42 U.S.C. § 406(b) ATTORNEY FEES

This matter comes before the Court on Plaintiff's motion for authorization of attorney fees under 42 U.S.C. § 406(b). Counsel for Plaintiff seeks a gross attorney fee award of \$9,608.60. The Commissioner has filed a response to Plaintiff's motion indicating Defendant has no objection to the fee request.

Attorney's fees may be awarded to a successful social security claimant's lawyer for his or her representation before a court pursuant 42 U.S.C. §§ 406(b); Straw v. Bowen, 866 F.2d 1167 (9th Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519 (9th Cir. 1987). Previously, this Court awarded Plaintiff's counsel \$6,808.47 pursuant to the Equal

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1 Access to Justice Act (EAJA).

2 Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld
3 from the past-due benefits. This 25 percent limit applies to the total of EAJA and 406(b) fees
4 combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4th Cir. 1982); Webb v.
5 Richardson, 472 F.2d 529, 536 (6th Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5th Cir.
6 1970).

7 Plaintiff was awarded \$38,434.40.00 in past due benefits. The requested gross fee of
8 \$9,608.60 represents 25% of past due benefits. The Court concludes that the attorney's fees sought
9 counsel are reasonable within the meaning of § 406(b). Plaintiff's counsel is entitled to a gross
10 attorney fee of \$9,608.60. Subtracting the \$6,808.47 previously awarded EAJA fees, counsel is
11 entitled to a net § 406(b) award of \$2,800.13 .

12 ACCORDINGLY,

13 IT IS ORDERED:

14 Plaintiff's Motion for an Award of Attorney's Fees [Dkt #31] is **GRANTED**. Plaintiff's
15 counsel is awarded gross attorney fees in the sum of \$9,608.60. The Commissioner is directed to
16 subtract the \$6,808.47 previously awarded EAJA fees and send to Plaintiff's counsel an award of
17 \$2,800.13., minus any applicable processing fees as allowed by statute.

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19 DATED this 7th day of November, 2008.

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FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

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